EXHIBIT F

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

PEAJE INVESTMENTS, LLC,
Movant, Appellant,
-vs- Case No. 16-2377
ALEJANDRO GARCIA-PADILLA, ET AL,
Respondents, Appellees.

PEAJE INVESTMENTS, LLC
Movant, Appellee,
-vs- Case No. 16-2430
ALEJANDRO GARCIA-PADILLA, ET AL,
Respondents, Appellees,

FINANCIAL OVERSIGHT AND MANAGEMENT BOARD,
Movant, Appellant.

DIGITAL TRANSCRIPTION
ORAL ARGUMENT HELD BEFORE
JEFFREY R. HOWARD, CHIEF JUDGE
O. ROGERIEE THOMPSON, CIRCUIT JUDGE
WILLIAM J. KAYATTA, JR., CIRCUIT JUDGE
WEDNESDAY, JANUARY 4, 2017
Job No. 4622

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Job No. 4622

ASSURED GUARANTY CORPORATION; ASSURED GUARANTY MUNICIPAL CORPORATION,

Plaintiffs, Appellees,

-vs- Case No. 16-2431

COMMONWEALTH OF PUERTO RICO, ET AL,

Defendants, Appellees

FINANCIAL OVERSIGHT AND MANAGEMENT BOARD,

Movant, Appellant

ALTAIR GLOBAL CREDIT OPPORTUNITIES FUN (A), LLC, ET AL,

Movants, Appellants,

CLAREN ROAD CREDIT MASTER FUND, LTD., ET AL,

Movants,

-vs- Case No. 16-2433

ALEJANDRO GARCIA-PADILLA, in his official capacity as the Governor of Puerto Rico, et al,

Respondents, Appellees

FINANCIAL OVERSIGHT AND MANAGEMENT BOARD,

Movant, Appellant

BRIGADE LEVERAGED CAPITAL STRUCTURES FUND, LTD., ET AL

Plaintiffs, Appellees,

-vs- Case No. 16-2437

ALEJANDRO GARCIA-PADILLA, in his official capacity as the Governor of Puerto Rico, et al,

Defendants, Appellees

GOVERNMENT DEVELOPMENT BANK OF PUERTO RICO,

Defendant,

FINANCIAL OVERSIGHT AND MANAGEMENT BOARD,

Movant, Appellant.

NATIONAL PUBLIC FINANCE GUARANTEE CORPORATION,

Plaintiff, Appellee,

-vs- Case No. 16-2438

ALEJANDRO J. GARCIA-PADILLA, et al,

Defendants, Appellees,

FINANCIAL OVERSIGHT AND MANAGEMENT BOARD,

Movant, Appellant.

US BANK TRUST NATIONAL ASSOCIATION,
Plaintiff, Appellee,
-vs- Case No. 16-2439
ALEJANDRO GARCIA-PADILLA, in his official capacity as the Governor of Puerto Rico, et al,
Defendants, Appellees

FINANCIAL OVERSIGHT AND MANAGEMENT BOARD,
Movant, Appellant.

DIONISIO TRIGO-GONZALEZ, ET AL,
Plaintiffs, Appellees,
CARMEN FELICIANO VARGAS, ET AL,
Plaintiffs,
-vs- Case No. 16-2440
ALEJANDRO GARCIA-PADILLA, in his official capacity as the Governor of Puerto Rico, et al,
Defendants, Appellees

FINANCIAL OVERSIGHT AND MANAGEMENT BOARD,
Movant, Appellant.

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WITNESS: PAGE

(None.)

EXHIBITS

EXHIBIT DESCRIPTION MARKED

(None.)

Wednesday, January 4, 2017

THE CLERK: The first case today is 16-2377, Peaje Investments LLC versus Alejandro Garcia-Padilla et al and consolidated cases. And Number 16-2437, Brigade Leveraged Capital Structures Fund V Alejandro J. Garcia-Padilla et al and consolidated cases.

MR. BRUNSTAD: Good morning, your Honor, Eric Brunstad on behalf of Peaje Investments. If I may have about three minutes for rebuttal time, your Honor?

THE COURT: Yes.

MR. BRUNSTAD: Thank you. First of all, we appreciate being here on expedited review. And in the time that I have this morning I'd like to touch upon three things. The first is the harm that Peaje is suffering as a result of the taking of its collateral.

The second is why adequate protection is the correct standard of cause here.

And the third is why the District Court erred in failing to hold a hearing.

Focusing on harm, Peaje holds $63 million in limited recourse bonds. By limited recourse, I mean that ordinarily Peaje can look only

to its collateral, the Toll Revenues to be paid. When we started back in May of 2016, Peaje's collateral consisted of two buckets. The first bucket consisted of cash equal to about 10 percent of the principal and interest outstanding on the bonds, on deposit with the fiscal agent. The second bucket is the future Toll Revenues.

Now here we are in January, the second payment; I understand first payment in July, second payment now has been made from the cash. The cash is gone or almost gone. That money is gone. So all we have to look forward to now is the future payments, the future Toll Revenues, which we don't know that much about. We don't know how much they are, what they're actually going to be. We think they're going to be insufficient to both cover the future payment obligations and to make up for what has been taken. But the harm is --

THE COURT: Staying right with that, why is that the standard? I read your briefs below and on here you consistently say that the future revenue stream won't be enough to cover all of the obligations, not just the debt obligation but also refunding, in effect, collateral. And as I understand the adequate protection rule which you'd

like us to apply, we don't look at that. We actually look -- if a creditor is over-secured we will get whether the collateral will be impaired down to the point to eliminate what the Court's call an equity cushion. And I don't see you ever having argued that either below or even in any brief to us on appeal.

MR. BRUNSTAD: Yes, your Honor. But the critical point there is that it's a question of fact. It depends on the value of the future revenues. They --

THE COURT: Can you point to anything in your filings with the District Court where you proposed, where you even alleged that the diminution in the value of the collateral would be enough to take you down below -- in other words, not just impaired the collateral, but reduce it so much that it would impair the debt?

MR. BRUNSTAD: Well, we argued over and over again that that was what was going to happen.

THE COURT: I didn't see it. Can you point me towards where you --

MR. BRUNSTAD: On the (inaudible), your Honor, I will give you the page cites to our

brief. I don't have it right in front of me, but I will do that.

But the point is that it is a question of fact, and we never had a hearing. And I also want to point out, it is the debtor here, the Commonwealth's burden to show that there is no harm to us. It's not our burden to show that when they take our collateral and spend it, that we will be harmed. It is their burden to show that it won't be. When they take your cash, when they take your property, and they dissipate it or they spend it, it is their burden to show that we're being adequately protected nonetheless. And the adequate protection standard is very simple. It comes from Morales and it's that they must basically show there's a reasonable assurance of a suitable replacement.

They have to show that the cash today is being replaced by something, and they have to show first when they're going to stop taking our collateral, because if they keep taking our collateral infinitely into the future we'll never be paid, we're obviously harmed, and --

THE COURT: Back to the burden question that you just touched on and explain to me the basis for your assertion that the burden would

be on them given that the statute -- I know we start out with language that says "For cause shown".

MR. BRUNSTAD: Correct, your Honor.

THE COURT: That "shown", I think suggests that the party seeking relief will show cause, which kind of sounds like you have some burden here.

MR. BRUNSTAD: We do. We have a burden of showing we have a secured interest. We have a burden of showing that they are taking our property and spending it. Those are undisputed facts. We've established our burden. The burden that exists for them to show, that their taking of our property and dissipating it is not causing us harm.

This standard of cause is borrowed from Section 362 of the Bankruptcy Code. Section 362 says that relief from the automatic stay in bankruptcy may be granted, including for lack of adequate protection.

Then the concept of the cause is borrowed there into PROMESA here. We take the subtle meaning of that concept here. The subtle meaning includes that they have the burden of showing that they're taking our property and

spending it is not causing us harm. That's what adequate protection means. The burden of proof is baked into that very concept.

Now there's an important reason why that must be the standard here. PROMESA itself bars us from asserting a remedy to stop them from taking our property. The statute itself prevents us from asserting a remedy. That in and of itself generates a conflict with the Constitution, with the Fifth Amendment, where somebody is continually taking the property and you can do nothing about it. Ordinarily we have all kinds of remedies that are being prescribed by the statute. To avoid a conflict with the Constitution we must have a mechanism that allows us to show that they -- we're entitled to relief from the stay unless they can show --

THE COURT: But see, we have not confirmed, you just said we must have a mechanism that allows us to show.

MR. BRUNSTAD: Correct.

THE COURT: All right. So go back to the question. How much do you have to show and when?

MR. BRUNSTAD: Yes.

THE COURT: And so what do you say to the point that when you take the word "Shown" and you add in the policy considerations that we're talking about, a temporary stay, we're talking about a desire to reduce suits, why wouldn't it potentially lead to an argument that before a suit is going to be allowed a creditor needs to come in and at least make a prima facie claim that its actual debt obligation is being impaired by the reduction of collateral --

MR. BRUNSTAD: Yes.

THE COURT: -- below -- you have to at least claim that in your motion.

MR. BRUNSTAD: Oh, we did. And in the end it's the same burden we would have under Section 362. Under Section 362 we must show cause, same idea, all we have to do is come in and say "We have a lien, a security interest in this property that's undisputed." Our collateral is being taken and spent. That is undisputed. The burden then shifts to them to demonstrate.

THE COURT: But there aren't -- there are bankruptcy cases, are there not, that say that even in that situation, the creditor still has the burden of showing that there is no equity cushion?

It's not -- it's not cut and dry; am I right?

MR. BRUNSTAD: But actually in this context it is. First of all, they refuse to tell us what the future revenues are going to be. We don't have that information. And if we don't have -- if we -- if we -- the cash was supposed to accumulate. The cash, as we understand it, is now gone. There will be no money there to make the July payment coming up in 2017, unless they turn those revenues back on. It takes time for those revenues to accumulate.

On pages 34 and 35 of our brief, we trace the history of the adequate protection concept to the Morales holding case that Congress adopted when it crafted the adequate protection concept. And there the Court was very clear the adequate protection concept clearly encapsulates this idea that if you take someone's property, a promise of future payment, which is all that they're offering here, a promise of future payment from the future revenues is never adequate protection unless they can show, and it's their burden, that the future revenues are so great that it doesn't make a difference.

Picture the apple farm, where the

farmer has apples, grows apples and they're there and the bank has a lien on the apples to secure a debt. The farmer sells the apples and now has cash. If the farmer spends the cash what does the creditor have to look to? Nothing. The prospect of future apples that may or may not be grown? Or it might be okay if the farmer can show in bankruptcy "I'm going to grow all these future apples and they're going to have such a great value that it doesn't matter that I just spent all of your cash from this crop, it's okay to make you wait."

But when the farmer spends the cash, sells the apples and spends the cash, which is what they have done here, they then have to come forward and show you that there is a reasonable prospect of a suitable substitute, a suitable replacement that will be provided.

THE COURT: Let me ask you a question about that. If Congress thought that -- that the -- sort of the bankruptcy code way of dealing with this in terms of adequate security was so utterly critical when we're dealing with a sovereign or somebody with the ability to tax or otherwise raise revenue through fees, tolls, et cetera, why do you suppose they didn't put that language in?

MR. BRUNSTAD: Two reasons. One is --

THE COURT: What I'm really asking is how much flexibility do we have?

MR. BRUNSTAD: Yes. I would suggest even though they said cause and didn't specify it, the flexibility I think has to be cabined within the adequate protection concept. And here's why:

The adequate protection concept is itself based on the Fifth Amendment. The adequate protection concept recognizes that when a debtor files for bankruptcy the automatic stay kicks in and prevents the secured creditor from exercising its rights when its collateral is being dissipated. And Congress rightfully chose that -- this came from a case law before Congress did this in 1978, that where the collateral is being taken or dissipated or is depreciating in value in bankruptcy, the secured creditor has a constitutional right to protection, otherwise the automatic stay itself affects the taking.

THE COURT: But if -- but if your -- if the Fifth Amendment argument hinges on the way the reserve account is set up, the way the expenditures are made, isn't that essentially a contract claim as opposed to a property claim?

MR. BRUNSTAD: No. Security Industrial Bank, the Supreme Court decision, it's cited on page 1 of our reply brief citing the Radford (ph) case, another other Supreme Court case, illustrate that a lien in collateral is a property right, not a contract right, it's a property right. A lien is a purchase. Under Article 9 of the Uniform Commercial Code, a security interest is a purchase interest in the collateral, it's an ownership interest --

THE COURT: But the payment that you're talking about is a -- is a twice a year payment --

MR. BRUNSTAD: Correct.

THE COURT: -- that is a result of contract.

MR. BRUNSTAD: That's just how the collateral is to be distributed.

THE COURT: Yeah, so I'm talking about the revenue stream.

MR. BRUNSTAD: In bankruptcy, it is true, if we were in a bankruptcy proceeding, and we're probably going to get -- go there, there will be another stay, one more delay, if -- in the bankruptcy proceeding it is true that debtors have

some leeway to alter the terms of payment, but that's not what we're talking about here. We're talking about the security of payment, the collateral itself, the property. And when it is dissipated, when it is spent, they have to show in order to be able to spend it, that it's not causing us any harm. Why? Because we are prohibited from the platform of the PROMESA of stay from exercising our rights.

So to preserve the Fifth Amendment concern, and applying the Canon of Constitutional Avoidance, the Court should interpret the cause standard under PROMESA to be the same as the cause standard under Section 362 of the Bankruptcy Code to avoid that conflict with the Constitution where they could just continue to take the collateral for as long as they want and we can do nothing about it. The standard should be the same. It should also be the same under the Borrowed Statute Canon, because the -- the cause standard under the bankruptcy code was imported here and so, the subtle meaning goes with it, including the requirement of adequate protection.

Adequate protection requires that they show that a suitable substitute will be provided for

what is being taken. They never showed that below, we never had a hearing. As the Martin case from the Eighth Circuit establishes, adequate protection is a question of fact. You cannot have a court decide adequate protection without a hearing, an evidentiary hearing.

THE COURT: Thank you.

MR. BRUNSTAD: Thank you.

MS. SOOKNANAN: Good morning, your Honors. Sparkle Sooknanan for the Altair appellants, holders of bonds issued by the Employees Retirement System. May I reserve two minutes for rebuttal?

THE COURT: Yes.

MS. SOOKNANAN: Thank you. Your Honors, it is undisputed that since July of 2016, the ERS has received over $100 million of employer contributions that it has diverted from Appellants's collateral accounts. It is also undisputed that appellants have a lien on that property and all employer contributions received by the ERS. And in the absence of adequate protection to protect that property interest, Appellants are entitled to relief from the PROMESA state.

Appellants are both statutorily and

constitutionally entitled to adequate protection. What the adequate protection requirement does is it essentially reconciles the competing interests of debtors and creditors. Debtors get some breathing room, secured creditors are barred from seizing their property during the stay, and in exchange the adequate protection requirement is meant to protect secured creditors from the loss of value of their collateral. And what the Commonwealth is advocating is essentially a one-sided automatic stay where debtors's interests are protected and secured creditors's rights are essentially disregarded, and that is not the statute that Congress enacted.

THE COURT: I understand that it's (indecipherable) that the collateral potentially has been reduced here, but let me ask you the same question I was previously asking.

Is there a claim here in this case that the reduction in collateral is enough to push you to the point where there's no equity cushion, or even worse, such that the payment of the debt itself is now in jeopardy? Because as I understand it, you've I think stipulated that there'll payments through the current extension of the Moratorium Act and then inflows thereafter will be roughly 19

million a year where the debt obligations are roughly 14 million a year -- or a month, rather. So it sounds like in 20 months, you build up 100 million back up.

So I'm having trouble seeing where you've alleged the type of impairment of collateral that would rise to the level of inadequate protection.

MS. SOOKNANAN: So two responses to that, your Honor. First, if it is in fact true that all future employer contributions are going to be paid, the bonds may well be over-secured. The problem is here that Appellees themselves have said very clearly that future employer contributions are uncertain. And in fact, the only facts in the record below, on which the District Court made its decision about the certainty of future employer contributions, is that they're uncertain.

The ERS has said that in plain terms, the Commonwealth just a couple months ago, in October when it submitted its fiscal plan to the Oversight Board said that, that we can't trust in those future employer contributions. So they cannot then say we are protected by those very contributions.

And the District Court -- remember, a district court found that the reason we are adequately protected is because there is this future revenue stream. And the only facts in the record about that revenue stream were facts we put forward, statements by Appellees themselves that those payments are not uncertain -- are uncertain. I apologize. And if those payments are uncertain the bonds are not over-secured.

And the second response to that is, is the burden of Appellees to show that in fact they're -- the bonds are over-secured? They have not, to this point, and perhaps they will clarify if it is their position that the bonds are over-secured and if they would like to prove as an evidentiary matter that that is the case, but they did not meet that showing below and there's no record on which this Court to make that showing. And the District Court didn't find that to be the case.

THE COURT: Could you clear up a little confusion regarding -- as I understand it, there's 75 million in funds that are in bank X, that you would be all fine, everything would be okay if it were moved over to a trust account?

MS. SOOKNANAN: Yes, your Honor. So

it is our -- so they have diverted -- as of Nov -- as of the time of the hearing, as of November it was around 75 million. The ERS has said it's receiving approximately 18.8 million a month and so there's somewhere more than 100 million now.

What they are saying is that they're diverting our money, but they don't actually need it. They're not using it. The ERS has represented to this Court that it's simply sitting in an account being held and not used.

THE COURT: And does your lien not trade -- follow those funds into that account?

MS. SOOKNANAN: Correct, it does not. And what we've said to them is, "If you're not using the money, instead of holding the money in an operation account where you're free to spend it tomorrow, simply place it in a separate account, attach a lien, or hold the money for our benefit until a court decides who has the right to that money." That's all we have asked for and that would have ended this litigation. That's what we asked for in the District Court.

THE COURT: And do you agree with -- ERS asserts that its prohibited from making that transfer by the Moratorium Act, or executive order

issue pursuant to the Act, and what they cite in their brief simply suspends an obligation to make the transfer, but at least English translation does not indicate that it prohibits them from making a transfer.

MS. SOOKNANAN: So, even if the -- the Moratorium Act prohibits them from making that transfer, that is why we are saying "Even if you're not transferring it to our collateral accounts, if you're not using it put it in a separate account, don't keep it in an operating account where you're free to spend it. Put it in a separate account and agree not to touch the money for this stay and when a court decides whether we have actual access to the money or not, that's when the money can be moved."

So we understand that the -- their hands might be tied by the Moratorium Act in some respect, but if they're not using the money and they have no need for the money they should separate the money, and that's all we have asked and they have refused to do so to this point.

THE COURT: And so, do you agree that the Moratorium Act not only suspends an obligation, but prohibits them from performing that obligation?

MS. SOOKNANAN: Your Honor, I would

say the Moratorium Act suspends the obligation even if it -- even if it prohibits them that does not prevent them from simply separating the money. Right now the money is sitting in an operating account and they are representing to this Court they're not using it, but they're free tomorrow to spend that money.

Our lien does not attach to that operating account and they have stipulated that they pay expenses out of that operating account.

At the end of the day, Appellants are entitled to adequate protection, and in this case, they have not proven that we are adequately protected by that future lien on employer contributions. And this is not a case where Appellants are saying despite -- there's a lot of rhetoric in the Commonwealth's brief about the financial woes facing the Commonwealth, and that may well be true, but this is not a case where the Commonwealth is saying to this Court that it needs Appellants's property to keep the lights on. They are saying to this Court that they are diverting our property, money that is ours, and it is undisputed that it is ours, they are diverting that money, just keeping it in an account for no reason whatsoever

and holding that money. We cannot start telling secured creditors that they will have no access to their collateral. That it will be diverted by a debtor with no adequate protection whatsoever, and in this case, for no reason whatsoever.

Secured creditors are constitutionally entitled to adequate protection.

THE COURT: In your case, do you think it makes any difference -- suppose we agree with you about the standard --

MS. SOOKNANAN: Yes.

THE COURT: -- that adequate protection -- is the Bankruptcy Code adequate protection and we look to see whether there's an equity cushion of at least 20 percent or more or something like that. Does it make any difference in your case to whom the burden of production and the burden of persuasion is allocated?

MS. SOOKNANAN: Your Honor, in this case it does, because the appellees below had the burden of proving that we are adequately protected. They have not contested that and the District Court held that to be so. They did not meet that burden below. They did not even attempt to show that there was an equity cushion because no hearing was

conducted. And for that reason, at a minimum, if it is their claim today that we are adequately protected because there is an equity cushion, and this Court could reman the case so they have the opportunity to prove that. But on the record that's before this Court, there is nothing that this Court can use to decide that there is an equity cushion, all that's in the record about that future revenue stream are statements from Appellees themselves that those payments are uncertain.

And on that record, the Court cannot find and the District Court incorrectly found that Appellants are adequately protected. Thank you, your Honors.

MS. MURPHY: Good morning, your Honors, and may it please the Court, Erin Murphy on behalf of the individual Commonwealth Defendants.

Congress enacted Section 405 of PROMESA for the expressly enumerated purpose of providing the Commonwealth with immediate but temporary reprieve from costly creditor lawsuits. Now withstanding Congress's findings that this temporary stay is essential to stabilize the region, Appellants insist that they should be able to litigate their claims immediately even though they

concededly are being paid in full right now, and concededly will continue to be paid in full throughout the duration of PROMESA's stay.

The District Court's conclusion that they should have to wait out the remainder of the brief stay that's left is a classic interlocutory order over which we believe this Court lacks jurisdiction, but in the event the Court concludes otherwise, should affirm the decision below because the District Court was manifestly correct in concluding that Appellants failed to demonstrate anything that differentiates them from all the other creditors to whom this stay is plainly intended to apply.

THE COURT: Let's assume that that shows that the debt payments were remaining current for now, but the Commonwealth took all of the collateral that would secure future debt payments, a hundred percent of it, is it your contention that as the Commonwealth is in the process of doing that, Congress prohibited the creditor from going to court to protect itself?

MS. MURPHY: Well, the creditor can go to court and try to demonstrate cause to lift the stay, and that's going to depend on the particular

facts that --

THE COURT: Are you saying that (inaudible) cause, what I just described?

MS. MURPHY: I think it depends on what the collateral is.

THE COURT: Assume it's a hundred percent of the collateral.

MS. MURPHY: But if the collateral is purely cash, at the end of the stay they get to litigate their claims and seek money damages for the full amount of what they lost during the stay.

THE COURT: Well, if the money is being given and dispersed to a million people, so there's no claim, and they have given unsecured claim for money damages against the Commonwealth, the whole idea of security seems to me that (indecipherable) standards of secured credit rather than unsecured.

MS. MURPHY: Sure. And these creditors will be secured creditors. They are right now and they'll be secured creditors when the stay lifts.

THE COURT: Not in the hypothetical I've asked you to address, which as I've proposed in the hypothetical that all of the collateral is

taken.

MS. MURPHY: Right. And in that circumstance, you'd be a secured credit -- secured creditor whose security is gone, but you'd have a claim to litigate against the Commonwealth saying "You dissipated my security and therefore you owe me money damages for the full value of my claim." That's what differentiates what's going on here from a bankruptcy case.

THE COURT: So I think what you're saying is tomorrow the Commonwealth could go out and take all of the collateral, essentially, of all of the creditors in Puerto Rico and there's nothing that the creditors can do about it until after the fact bring damage claims that themselves would be unsecured. That's what I'm hearing you saying.

MS. MURPHY: What I'm saying is that a creditor would need to come in and make a showing about not just that their collateral is being taken right now, but that they won't be able to recover their collateral once the stay lifts. And that's what these creditors can't show.

THE COURT: True. In the hypothetical it's being dispersed to the general population.

MS. MURPHY: And if they could

demonstrate that not only is all of their collateral being dissipated, but there will be nothing left at the end of the day, there will be no ability for them to get money damages to get back the money they have lost, that might be an instance where you could demonstrate cause to lift the stay.

But that's not what we have here. What we have here is a creditor who's being paid right now, and who hasn't demonstrated that they won't be paid once this stay lifts or that even if they weren't paid at some point, they wouldn't have all the remedies that both PROMESA and Act 21, the Moratorium Act, contemplate. Because both of those statutes fully preserve their secured interests and their ability to litigate those secured interests once the stay lifts.

THE COURT: Are you aware of any bankruptcy case that holds that the elimination of collateral is not something that is cause for relief merely because you would have an unsecured damage claim in which you might or might not recover your money?

MS. MURPHY: In bankruptcy context, we're operating under a rule that we don't think is the right rule here. In the bankruptcy context,

there is an adequate protection standard written into 362. There's also a burden shifting (indecipherable) written into 362 that says it's the debtor's burden to demonstrate adequate protection. Both of those provisions were conspicuously excluded from Section 405 for PROMESA.

It does not include an adequate protection standard and it does not -- you know, they have repeatedly said that it's our burden. Under 362 it's the debtor's burden, but that's because the statute expressly says that it's the debtor's burden to demonstrate adequate protection.

That is another provision that Congress did not import into Section 405. And we would submit the reason Congress didn't import a burden shifting regime for proving adequate protection is because Congress also did not import an adequate protection standard into Section 405 of PROMESA. It didn't intend that standard to apply and that's because you don't need an adequate protection standard in this context because PROMESA is quite different from the bankruptcy stay.

A bankruptcy stay operates for the duration of the entire bankruptcy. So in effect what it says is you're never going to get to

effectively foreclose on your collateral, that's what's usually going on in an inadequate protection case, they want to foreclose on the collateral. And the automatic stay in bankruptcy says you don't get to do that period, we're letting the debtor keep your collateral for the duration of the stay. That, as courts have recognized, raises some distinct Fifth Amendment concerns that have led to an adequate protection standard that Congress put into that provision.

Here, that's not what's going on. PROMESA doesn't say that the debt that -- for one thing, there is no debtor right now. There is no Title III bankruptcy proceeding here. The Commonwealth is not a debtor. All that's going on is there's essentially a stay put in place for everyone to figure out whether we're going to proceed to a Title III bankruptcy proceeding, whether we're going to have voluntary restructuring, whether some of these obligations may continue to remain in force in the same shape that they are right now.

So this is very different from anything you have in the bankruptcy context and it's also temporary, it ends February 15th or at the very

latest May 1st. And at that point, either the Appellants here will be able to litigate their claims in full and seek money damages for whatever injuries they believe they have suffered, or we will be in a Title III proceeding at which point the 362 stay will kick in. Because in Title III, unlike in Section 405 of PROMESA, Congress actually imported 362 in its entirety.

So if we get into a Title III bankruptcy proceeding, they'll have a different set of arguments that they can make, they'll be able to say that they're entitled to adequate protection and that we need to make a showing about what is --

THE COURT: That's closing -- that's closing the barn door, right? A little too late here if in seven months all of the collateral has been taken. I keep going back to it and (inaudible) the burden, because I don't think the burden is constitutionally imposed, so we have a statutory instruction.

But I'm just having great difficulty with your argument that there's this seven-month window where the government can entirely, entirely destroy the value of collateral a hundred percent and yet that wouldn't in and of itself be good

cause.

Now, I'm not saying they're entirely destroying it here. There may be in the future income streams as the court found enough, but you're asking us to take pretty broad proposition that seems to run into a real takings problem.

MS. MURPHY: Well, your Honor does not have to resolve the hypothetical that you suggested in order to resolve this case, because as you've recognized, that's not the claim here.

THE COURT: Right, if you reject that hypothetical then it turns the argument back to whether there is adequate protection here or perhaps whether the burden of raising a question of adequate protection was or was not met in the allegations made, which is a different conversation than you've been urging us to have so far.

MS. MURPHY: Sure. And we do think that the right way for the Court to look at this is not -- and I don't think it would be consistent with what Connis (ph) was trying to do in PROMESA to say that the Commonwealth has to go through elaborate hearings where it demonstrates exactly, you know, for every dollar that we're spending to try to ensure that residents are receiving essential

services, which Congress put express findings into this statute that part of the point of the stay was to give the Commonwealth the resources it needed to ensure that its residents will receive essential services. So the idea that, you know, for every dollar diverted the Commonwealth has to demonstrate that it's also setting aside the exact equivalent dollar to ensure --

THE COURT: That's not the adequate protection test. You just have to show -- someone has to address the issue of whether there's an equity cushion or not. And if they're over-secured, then they're over-secured and go at it.

MS. MURPHY: Absolutely, your Honor, which is why we don't believe that they could satisfy adequate protection even if that were the correct standard here. But, we do believe that the right standard for the Court to apply is a more traditional equitable balancing of the equities in the case, looking at not just whether they're suffering some sort of harm as a result of the Commonwealth's actions, but whether they are suffering irreparable harm that cannot be remedied at the end of the stay.

And I think that has to be the right

standard, because we're talking about a statute that was enacted on the express premise that the Commonwealth was using pledged revenues to pay for essential services. And the executive orders they want to challenge, the first one, Executive Order 18, allowing the diversion of Toll Revenues, that was promulgated more than a month before PROMESA was enacted.

And there were -- it's also implicit and explicit in PROMESA that there would be creditors who wouldn't be paid during the duration of this stay.

So Congress enacted this statute, understanding that there were creditors as to who the Commonwealth and its instrumentalities wouldn't live up to a hundred percent of the bargain that they had made during this stay.

THE COURT: Wait. How do you suggest we deal with Section 405(k)?

MS. MURPHY: I think section 405(k) as a form of -- an additional form of protection for Appellants's interests.

THE COURT: But doesn't it suggest that we should not interpret PROMESA in a way as to destroy security interests since Congress said

PROMESA wasn't to destroy security interests?

MS. MURPHY: No, I think that what 405(k) is saying is notwithstanding the fact that the Commonwealth didn't have to live up to its obligations during the stay, that doesn't mean that you don't have all your rights the moment the stay lifts. So it's a form of protection saying, you know, unlike in a bankruptcy proceeding, we're not actually allowing the Commonwealth to discharge or alter your means, your secured interests, your contractual rights. All of those are fully intact and the moment the stay expires you can go to court and allege and try to prove that, you know, that these actions that were taken were inconsistent, that they caused you harm, that you're entitled to damages. So I actually think that 405(k) is further proof that Congress intended to allow the Commonwealth to do the things that it knew the Commonwealth was doing when it enacted this statute, and instead of creating a broad outlet to basically let every creditor out from under the stay, Congress said what we're going to do is ensure that your rights are fully protected once the stay lifts. And the "For clause" standard is really intended to be a safety valve to deal with the extraordinary

creditor, not the creditor who's just making basically the same argument that any creditor, at least any secured creditor could make, which is, you know, "I don't think the Commonwealth is living up to a hundred percent of --"

THE COURT: Tell me what -- what an extraordinary creditor would be, in your mind.

MS. MURPHY: I think an extraordinary creditor, you know, one, you might have a creditor who has a form of collateral that actually cannot be remedied if it's lost during the -- it's something other than money. Money can always be remedied with money. If they had a particular form of collateral, that was being, you know, diminished and could not be made up for after the stay was lifted.

You might also perhaps have a creditor who has unique circumstances of their own that make it irreparable damage if they aren't getting paid now. Now of course, I do think that you at least have to be a creditor who's not getting paid, which these creditors aren't. These creditors are being paid in full and conceivably will be paid in full.

So, in -- in our mind, you know, that makes them basically the very last creditors that Congress would have wanted to be able to lift the

stay and engage in litigation about whether they should be entitled to effectively two lines of security for their interest instead of just one.

THE COURT: When you say that the statute should -- or contemplates sort of a traditional balancing of the equities, so shouldn't there be a hearing?

MS. MURPHY: I think that the -- the way that this case ended up getting to the Court -- I mean, there were stipulated facts that basically stipulated to all of the facts that were relevant to the analysis here, because they stipulated that they've been paid, they will be paid throughout the stay and there was stipulations about what the revenue streams -- I mean, in the Altair case there's specifically the stipulations Judge Kayatta referenced about exactly what the levels of the revenue streams are. So everything was there that the Court needed.

And in the Peaje case, there had just been a hearing from which hundreds of pages of testimony were designated on the specific question of whether the HTA revenues were going to be sufficient in the future. And one of the claimants there was an insurer saying "We think we're going to

have to cover claims in the future because we think these revenues will run out."

So, you know, it's not as if the District Court made a decision here without facts. And in that particular context, I think really it was incumbent on these parties if they thought given -- you know, given the record that they put before the Court of stipulated facts, of testimony, of the information that the Court recently could have viewed as sufficient for it to make its ruling, I do think it was incumbent on them to say "Hey, hold on, you know, you need to reconsider this ruling because we think we had something additional beyond what we already put before you that you didn't realize would have been relevant." And neither of the appellants here did that.

THE COURT: What is the result of this ongoing litigation had on the whole notion of breathing room?

MS. MURPHY: Well, there is a lot of testimony that the Commonwealth put on about that in the Brigade hearing, and some of that was designated in the Peaje proceedings, regarding about how, you know, it has caused the Commonwealth to have to divert resources. And having a hearing not only

requires someone to come testify, it requires pulling people away from what they should be doing under PROMESA, which is, you know, getting the Commonwealth back in fiscal order to prepare for the hearing, to help prepare and review all papers that are being filed in all of this litigation.

So it really has been a tremendous distraction to the Commonwealth, which is exactly the opposite of what Congress intended when it said "We're going to give you this stay precisely because we don't want you to be spending your time in costly creditor litigation when it would be better to put that time to the use of -- and seeing to the needs of the people of Puerto Rico and getting Puerto Rico back into fiscal order."

THE COURT: And just one more question.

Regardless of who has the burden, if we're honing in on the notion of equitable cushion, what specifically in the evidence demonstrates that there's an equitable cushion, the record stipulated record evidence?

MS. MURPHY: Sure. I think it's -- it's -- I mean, the stipulated evidence in Altair demonstrates that even without the contributions

from the Commonwealth employees, which are only suspended temporarily pursuant to these executive orders, even the non-Commonwealth contributions are higher than the stipulated amounts necessary to service the debt.

And as to the HTA Peaje party, you know, I don't understand them to ever have even suggested that they think the HTA revenues are going to be so low that they can't be paid, particularly given that Peaje is actually -- they're kind of the first priority set of creditors under the HTA, because they're the earliest set of bonds. So basically you'd have to have like no HTA revenues coming in for them to have any real risk of not getting paid. And that's why, as I understand it, really their complaint has only been they don't think there will be sufficient revenue to not only pay them, but reinstate the reserve accounts and we don't think that's the right standard even -- you know, we don't think they're entitled to an equity cushion that would not only ensure that they're being paid, but also kind of ensure that they have a secondary line of, you know, kind of security for getting paid in the future. If there are no further questions, thank you.

MR. CHESLEY: May it please the Court, Richard Chesley on behalf of ERS, the Employee Retirement System of the Commonwealth of Puerto Rico.

I appreciate the Court's time here this morning and I will be brief as Counsel for the Commonwealth has covered many of the topics we wanted to raise. But with respect to the issues before this Court and regardless of how the Court resolves certain of the legal challenges, the Appellants's appeal with respect to ERS founders on one crucial set of facts to which they stipulated below, and which the District Court relied upon in its holding. That there are sufficient monies in the debt service and reserve accounts to service the bold holder debt until April 1st of 2017, after the PROMESA stay expires. And not a single principal and interest payment will be missed while the PROMESA stay remains in place and therefore, the Appellants face no financial harm as a result of the stay.

Moreover, based upon the liens that are held in the pledged property, and we'll talk about that in a moment, the bondholders are secured not only until the conclusion of the PROMESA stay,

but for many, many years to come based upon the stipulated record that was before the District Court.

And again, while Counsel for the Commonwealth has adequately covered many of the issues we want to touch, I do want to raise a couple of points that I think are extremely relevant for this panel's consideration.

First of all, the Appellants take the position that the standards for relief from the automatic stay under Article IV of PROMESA, I'm only talking about Article IV of PROMESA, should simply mirror those under Section 362 of the bankruptcy code. Namely the cause for relief from the automatic stay should include, but not be limited to, which the bankruptcy code provides, adequate protection. They advanced the position despite the fact these two statutory schemes have different language and were intended for very different purposes.

So then what did Congress intend? And I think the Congressional history underlying Article IV of PROMESA is very critical to see what did Congress intend. Well, the house report on Section 405, which is cited in our brief, states under the

Section 405 automatic stay appoint enactment, "If a party is determined to be subject to irreparable damage because of the imposition of the stay the district court is authorized to grant relief from the stay to such party."

Of course, if Congress wanted to impute the adequate protection standards under Section 362 and Section 361 into Article IV it certainly could have and it absolutely did that with respect to Article III of PROMESA. But we're not in the realm of Article III, we're simply during this limited phase of the infirm relief.

THE COURT: And then how do you address the argument that as a constitutional matter, taking so much of the collateral as to impair the ability to pay the debt is itself irreparable harm because it's a taking?

MR. CHESLEY: And this goes to the factual issues that were before the District Court on the ERS appeal.

THE COURT: Well, no, putting aside the facts, you are suggesting the use of the irreparable harm standard rather than an inadequate protection standard.

MR. CHESLEY: Yes, your Honor.

THE COURT: And I'm having trouble seeing what the difficulty is if we had a true scenario assuming the facts did show blatant lack of adequate protection, wouldn't that be irreparable harm?

MR. CHESLEY: Well, fortunately in our case that's not the factual record, but to the extent -- you Honor, I do agree to the extent we had a situation where there was a blatant taking of all of the property, then I think there would be a compelling argument that that is irreparable harm.

THE COURT: And then could you also address the issue I had asked Counsel about earlier, why -- what is it that actually prohibits ERS from making the payments? I understand there's legislation that has suspended your obligation to do so.

MR. CHESLEY: The Moratorium Act prohibits the transfer of that --

THE COURT: And what is it in -- can you refer to us any language in that --

MR. CHESLEY: With respect to the Moratorium Act, your Honor, I can reference that to the Court, but it limits the ability -- limits the inflow of contributions from the Commonwealth to

ERS, not the non-Commonwealth employees, and it limits our -- precludes our ability to then transfer amounts that we are holding to the bondholder.

THE COURT: Okay. The cites in the briefs didn't seem to help on finding language that did that.

MR. CHESLEY: We apologize for that, your Honor. We can file a supplement to the extent that is necessary.

But I do want to touch in my last minutes on the facts. Yes, your Honor?

THE COURT: Please file that.

MR. CHESLEY: We will, your Honor. And if I can, I do want to touch on the facts of our case. Specifically since July of 2016, at the beginning of the PROMESA stay, the ERS -- ERS has been holding over 75 -- currently holding over 75 million in the operating account based upon contributions from the non-Commonwealth employers.

Counsel for the Appellants made mention of the fact that there's all these representations or statements as to the uncertainty with respect to future contributions. There is no uncertainty with respect to the non-Commonwealth contributions which amount to approximately

$20 million per month. In fact, during 2015, again, this is in the record, ERS received about $224 million. It solely in non- -- non-Commonwealth employer contributions. This is in the face of a debt service obligation of $166 million.

This undisputed evidence was presented before the District Court, that in fact the equity cushion exists. And with respect to that $20 million, it continues to flow in and the Appellants do have the lien. If you look at the pledged property definition that's included in the stipulated facts, they have a lien in that collateral, they have a lien in the reserve account collateral which will pay them, and they have a lien in the future revenue.

And the last thing that I think is critical is what the judge did with respect to -- if I may finish, your Honor.

THE COURT: Yes.

MR. CHESLEY: What the judge did, the District Court with respect to the balancing of the equities, and he made particular mention of the fact that once the stay is alleviated the future revenue stream, which is an additional $250 million, approximately, per year in Commonwealth employer

contributions, will then be made available back to ERS. This, in combination with more than adequate amounts to pay the debt service based upon the non-Commonwealth gave the District Court more than adequate factual support to grant the relief that he did. Thank you, your Honor.

MR. LUSKIN: May it please the Court, Michael Luskin for the Financial Oversight and Management Board of Puerto Rico, the Appellant in seven appeals involving the intervention motions and the amicus in the two lift-stay appeals that we've been hearing about this morning.

THE COURT: Mr. Luskin, are there any pending cases in the District Court in which you're waiting to hear about your intervention status?

MR. LUSKIN: Yes.

THE COURT: Okay.

MR. LUSKIN: One called Lex (ph) claims, which is mentioned in our opening brief or amicus -- or opening appeal brief.

I know time is limited, but I am going to spend a moment on the seven appeals that are consolidated here. We believe that the District Court improperly applied a narrow and mechanical test of Rule 24, governing intervention, the result

of course was to deny us participation in the seven cases and the order should be reversed. The District Court found what it referred to as a procedural deficiency, but there was none, the Court apparently believed that what the board was required to do was to file one of the pleadings of the kind listed in Rule 7, answer and answer with counterclaims and so on, but that's wrong.

What the rule requires is a pleading that sets out the claim or defense for which intervention is sought and that is precisely what we did.

We believe the District Court should have taken note of the -- and taken into account the specific procedural postures of the cases. In the three consolidated Peaje cases there were no complaints on file. Two of the three parties had included proposed complaints with their motion papers and one of them, Altair, did not include a proposed or draft complaint. So, there was nothing to respond to in the traditional Rule 7 sense.

THE COURT: In some of the cases where there was a complaint filed --

MR. LUSKIN: Yes, the Brigade cases.

THE COURT: -- why didn't the Board

just file, I mean it could have been a one-page answer, right, because an answer -- you only need to respond to allegations against you. There were none.

MR. LUSKIN: Well, I think that -- you know, we did struggle with that, your Honor, to tell you the truth. We did feel that, frankly, responsibly to reply to those, to answer those allegations we would have had to take a position on the merits on the preemption, the taking and the other constitutional claims.

THE COURT: Why is that? Under Rule (indecipherable) you don't have to respond to allegations that aren't against you, right?

MR. LUSKIN: Well, I can -- you're correct and I will --

THE COURT: But that was your thinking, you thought you might be taking a risk of having to respond?

MR. LUSKIN: Well, we were -- yes, we did not want to take a position, frankly, on any aspect of these constitutional claims, and that relates to the stay issue as well. Having the Oversight Board take a position on the merits, or refusing to take a position on the merits, has an

impact on our ability to negotiate. Our goal as we see, our statutory rule is to operate in a level playing field, frankly, a quiet playing field. That's what the stay is about, and that's what we said in our intervention papers, and that's what we explained to Judge Besosa as to why in our -- in our motion for reconsideration, why we didn't take positions on the merits. We still have not taken positions on the merits and we believe that during this quiet period before Title VI or Title III proceedings are filed we should not.

Our goal is to deal with those claims in the conference room, not the courtroom, and see if we can negotiate restructuring agreements or consensual fiscal plans.

What we did do, in all seven cases, Judge Kayatta, is -- is to address the sole live issue that was then before the Court, which were the pending motions to lift the stay. And there can be no doubt about what our position was, and that is after all the goal of Rule 24.

We think the District Court should have addressed our motions on the merits, not relying on the procedural efficiency, to use his words. And had he done so he would have referred to

Section 212(a) of PROMESA which allows us to intervene in any action against the Commonwealth. He could have done so under Rule 24a-2, which allows us to intervene as of right based on our interest, our unique position, the adequacy of representation sensation and so on. And we would then have participated in the case below.

We think that the -- this Court's prior decisions support the Oversight Board's view on these motions. The one case cited in the Court below was a case where there was no -- no proposed pleading at all submitted and we would agree, if -- if the punitive intervenor doesn't bother to put in a proposed pleading of any kind then I could see denying the motion. But even there in the Court's decision in Liggett (ph), there was no intervention motion, but intervention was allowed, particular facts but the right decision clearly. So those seven orders should be reversed.

Unless the Court has questions on intervention I'd like to turn to the merits. The amicus position on the lift-stay motions. And we have suggested, the Oversight Board has suggested a standard that is somewhat different than the other parties, we do not believe that the sole touchstone

should be adequate protection, though I will say, Judge Kayatta, that your hypothetical would, I believe, present a situation where adequate protection might trump everything else. But this is nowhere close to a case where a hundred percent of anyone's collateral is being taken and destroyed.

We also don't believe that irreparable injury alone is the sole touchstone. And others have pointed out that Bankruptcy Code 362 includes adequate protection as reason, as cause for lifting the stay. Certainly Congress knew what it was doing when it drafted 405E, it did not copy that language notwithstanding the fact that it -- it copied or incorporated verbatim 98 other provisions of the bankruptcy code in Section 301 of PROMESA. When it wanted to copy it knew how to copy. And it did not do so here and I think that for purposes of statutory construction that ought to be enough.

So why should the PROMESA standard be a different standard? And my answer is that PROMESA establishes a very different regime than the bankruptcy code. PROMESA establishes what I refer to as a quiet time, the breathing room, which is actually part of the findings in the statute itself, and purposes in the statute itself. It establishes

breathing room, a quiet time for the Oversight Board to do the very tasks that its mandated to do by the statute, which is to organize, to collect information, to designate covered instrumentalities to develop projections to review budgets. To develop fiscal plans and to negotiate out-of-court restructuring agreements, and to assess the advisability of going the out-of-court route or the consensual route of Title 6 of PROMESA or the nonconsensual or only partially consensual route of Title III bankruptcy. And it's supposed to do -- we are charged with doing all of that during the quiet period.

Only after we decide which way to go do we commence a bankruptcy proceeding if that's the decision, to go into chapter -- a Title III and in Title III-362 of the bankruptcy code along with 97 other provisions, expressly govern verbatim. But that's not where we are, we're in Title IV in the quiet period. And it is very important.

Forcing decisions on constitutional issues to go to the intervention point would impede negotiations, if not render them outright impossible.

THE COURT: In Congress --

MR. LUSKIN: Yes?
THE COURT: And I realize it was quite a concession because you used the word "Might", but you're attempting that a complete elimination of the collateral might be enough to overweigh everything else. Stay with that for a second --
MR. LUSKIN: Yes.
THE COURT: -- and not treat it as a concession, but treat it as a talking point. Why wouldn't Congress have wanted to say "Well, that's enough, but if you just take half the collateral, well below the equity position, that's not enough"? It's -- it's a -- it's a taking just as much.
MR. LUSKIN: Well, but for adequate protection and constitutional purposes, the only taking that matters is a taking that threatens the secured creditors's interest in the debtor's interest in the collateral.
THE COURT: Yeah, so assume that's the rule.
MR. LUSKIN: So if that's --
THE COURT: In any equity position debtor is out of luck -- creditor is out of luck, okay.
MR. LUSKIN: Right.

THE COURT: But I'm talking about a scenario where you go well below the equity --

MR. LUSKIN: Right. And I -- and I believe that in a situation where the facts show that a secured creditor at the outset of a case is clearly and unequivocally moving from over-secured to under-secured, in a way that damages and threatens its ability to be repaid, is a consideration.

However -- and the Supreme Court in Timbers points this out, that -- that duration of the stay is important. The Morales case, the Timbers case really don't help the Appellants here. That case involved a ten-year note after a plan of reorganization that stripped away the basket of rights that the secured creditor had --

THE COURT: The duration is important only if there's not enough time to do the taking. But if there's enough time to take it all then it's gone.

MR. LUSKIN: I -- following through that hypothetical, but I must echo what my brethren have stated up here, which is that we are so far away from that kind of situation. The record establishes over-security here. There is cash and

cash flow that is more than sufficient to pay the debt service, and certainly during the duration of the stay, from day one of the stay through the end of the day next month, or whenever it ultimately ends.

THE COURT: So I think I hear you saying, which makes sense, that it's not just the duration, but it's the duration in relationship to the berm rate here, and if the berm rate (indecipherable) the duration does not create enough to impair the collateral so that it threatens the payment of the debt then --

MR. LUSKIN: Correct.

THE COURT: -- (inaudible) would have an issue.

MR. LUSKIN: Your Honor, yes, that is correct and that is what distinguishes this case. Where we have a perpetual income stream from virtually all, if not all of the cash collateral cases or adequate protection cases that the Appellants cite, many of those cases were real estate cases or equipment cases where the cash collateral, the future rent that was being offered as adequate protection was rent under a lease with a term of years. It was -- in one of the cases there

was 13 months rent left and in another of the cases the key tenant was not renewing so the money was going away.

So in those cases, if you took away months 1 and 2 of rent, you weren't able to replace them with new loans 13, 14 and 15 as you are in these cases where total revenues are perpetual. And that's -- and the employer contributions are perpetual. And the excise tax and motor vehicle fees that the HTS, the highway bondholders have security interests in. And those numbers and those facts are in the record in the stipulations that were put in to the District Court.

I'm not sure -- I've lost track of the time here. I think I'm probably way over. I have one more point that I ask your indulgence.

THE COURT: Please make your point.

MR. LUSKIN: Okay. I apologize. I'm going to -- I do think the perpetual revenue stream distinguishes these cases from the typical cash collateral situation and the hypothetical that Judge Kayatta has put forward.

And I -- I'll end by making the point that the standard that the Oversight Board is advocating is a balancing of a variety of factors

without giving any one factor complete priority is not a new or unfamiliar standard. I mean, courts constantly weigh factors to assess cause in many situations where the statute doesn't list them or give examples. PROMESA uses cause in only two instances, one of them is the one we've been talking about, the other one does not list reasons.

The bankruptcy code and the bankruptcy rules authorize courts to pact for cause or for cause shown in 71 separate spots, by my count, of which reasons or examples are given in only 10. The Federal Rules of Appellate Procedure authorize this Court to act for good cause in seven instances and in none of them is an example given.

Courts do not need examples to figure out what the material relevant factors are, and if -- in your hypothetical, if the facts presented are like your hypothetical and constitutional issues are implicated then, yes, that factor may come to the fore.

But here, that is not what we have. There is no damage. There is no need for adequate protection. If there were need for adequate protection it's there in the equity cushion and the equity cushion in this case is different because of

the perpetual revenue. There's -- I think that absent any further questions from the Court I should stop. I've gone way over my allotment.

THE COURT: I have one.

MR. LUSKIN: I'm sorry, yes.

THE COURT: In terms of the approach that you are advocating to take, I'm sure you read Judge Besosa's Brigade case?

MR. LUSKIN: Yes.

THE COURT: Are you advocating something more along those lines?

MR. LUSKIN: I think Judge Besosa was not as express as I have been in -- in our brief of listing the particular factors. I think in fact, what Judge Besosa did is decide that he has to balance all of the factors and that among the factors that he was required to include or to assess was adequate protection and I think he did that. I would, speaking for the Oversight Board, like to see a decision from this Court is that is more express and that could be -- and more expansive on the balancing that makes it clear that the PROMESA regime pre-petition is different from the bankruptcy regime post-filing of the Title III case for instance, so that in other cases we have guidance

and Judge Besosa has more guidance, so yes.

THE COURT: Thank you.

MR. LUSKIN: Thank you very much.

And, again, I apologize for going over.

THE COURT: Not at all.

MR. BRUNSTAD: Thank you, your Honor.

Judge Thompson, there is no evidence in the record whatsoever of an equity cushion for Peaje and its bonds. Zero. Counsel paints a rosy picture that there will be enough money, et cetera, there is zero evidence in the record to substantiate those claims.

We didn't have an evidentiary hearing. We had an expert witness who was going to testify about the projections and things, that was not allowed. These bonds are going to go out for 19 years. Taking the cash today and spending it is real harm.

Judge Kayatta, the burn right now is a hundred percent, they are burning a hundred percent of the cash. Section 405(k) of PROMESA says they're not supposed to be impairing our collateral during the so-called quiet period. They are not maintaining the status quo, they are impairing our collateral yet they're violating the very statute they seek shelter under and saying there's no cause

for lifting the stay. Even though they are not complying with the statutory regime they are supposed to be honoring they are impairing our collateral and they are doing it in a way that is causing us harm.

Why should they have the burden? They have all of the information. We do not. They know what the protected revenues are. We do not. They -- only they know when they will stop taking our collateral. We don't know, we can't gaze into the crystal ball. They have refused to take a position on when they will stop taking our collateral. They have tipped their hand in this proceeding before the Court. They basically have said "We will continue taking the collateral. We make no commitment to when we'll stop taking the collateral."

And they're adequately protected because they have a lawsuit, an unsecured claim. They can sue us later for taking their collateral. But the third circuit said --

THE COURT: Counsel, so if there had been a hearing and you had put your expert on --

MR. BRUNSTAD: Correct.

THE COURT: -- would your expert have

simply said "We don't know"?

MR. BRUNSTAD: Our expert would have said looking at the -- what information we were able to get from them, the projected revenues may well not be enough to cover all of the future obligations and make up for what they're taking now.

Remember, the way this works is cash is being collected, total revenues are being collected and as they come in were supposed to be put into the accounts to make sure there's enough there to make the next payment. They stopped doing that last May. There was enough in there at that time to cover us through this month. But because they're not putting any more of those total revenues in, when we get to July there will be nothing there to pay us. We will be in default. And their argument is, "Well, we'll just continue to take the property and you can sue us later. You can have an unsecured claim a lawsuit against us for taking your property."

But as the Third Circuit said in the Rocco case we cite on pages 22 and 23 of our reply brief, "A lawsuit is too speculative in nature to offer adequate protection." And the reason for that is because substituting a lawsuit, a future right to

sue is never the same as cash in the bank today. They are going around saying "We don't have enough money to pay anybody, but trust us, we can spend all of your collateral today and we'll pay you in the future." Judge --

THE COURT: Yeah, go ahead.

MR. BRUNSTAD: You asked us for cites to where we argue that this is going to harm us and it's not going to be enough below.

THE COURT: I asked for a cite where you told the judge below that your debt -- the debt itself was not going to get repaid absent release from the stay.

MR. BRUNSTAD: Now recall, Judge Kayatta, we were not able to have our evidentiary hearing to come and make our arguments before the Court and --

THE COURT: I'm just looking at a very long motion in which you specified the harm, and as I read that harm, you were simply saying that the collateral itself is being reduced. I did not see any claim, and maybe I missed something, which is why I --

MR. BRUNSTAD: Let me do the best I can.

THE COURT: Okay.

MR. BRUNSTAD: I'll give you three cites. The joint appendix page 32, paragraph 43. The joint appendix page 35, paragraph 50. And the joint appendix page 171 at paragraph -- at paragraph 4.

THE COURT: And then to follow up on Judge Thompson's question, were -- did the judge deny you any discovery that you sought to do?

MR. BRUNSTAD: We sought -- we sought to get the financial projections of the revenues, what they were likely to be, so our expert witness could try to prepare and come up and see whether those projections were going to be adequate. Judge -- Judge Besosa, over their objection, did require them to give us those projections about the future revenues. And based upon that evidence, our expert was going to testify that the future revenues are likely to be insufficient to allow us not only to be paid in full going forward, but to make up for what they're spending currently.

THE COURT: I think let me ask my question again. Did Judge Besosa deny you any discovery that you tried to do?

MR. BRUNSTAD: He did not.

THE COURT: Okay.

MR. BRUNSTAD: But remember your Honor the key point that I'd like to reiterate, it was our burden to show -- we have a security interest, that's undisputed. It was our burden to show that basically they're taking our collateral, they're dissipating it. That's undisputed. Those are undisputed facts.

With that prima facie case made, it is their burden to show that it's not causing us any harm. And all you have heard from them today is, "Well, if there's any harm from this you can sue us in the future with a speculative lawsuit", you know, against us, even though they claim they don't have any money. Again, that's not adequate protection.

And the reason why it must be their burden to show adequate protection, again is because they have the information -- in addition, one key fact that's necessary to do the calculations is when will they stop taking the collateral? Because, Judge Kayatta, this case is your hypothetical if they just keep taking the collateral into the future. The burden is a hundred percent if they -- if they keep going and going and going and going as they plan --

THE COURT: But the regime changes in May at the latest, right?

MR. BRUNSTAD: Well, but Judge Kayatta, what happens at that point is we then substitute nearly one stay for another. When they file for bankruptcy they then get the automatic stay and then we have more hearings and more delay so we get one year, two years, perhaps, after the fact where they continue to take our collateral. Each day they continue to take our collateral the hole gets bigger and bigger and bigger and bigger and the problem becomes a problem akin to what happens with poor debtors who get behind on their mortgage payments. They may be able to make the payment in the future, but they never catch up on the arrears, and in the end the collateral isn't going to be sufficient to cover the hole. And again, it's not sufficient, the remedy they suggest is not sufficient, that we can just sue them in the future and get an unsecured claim against them for money damages they basically say they don't have the funds to pay.

So taking collateral today without adequate protection is real harm. That's -- under the borrowed canon -- the Borrowed Statute Canon we

take the subtle meaning of the adequate protection concept, which was designed to protect secured parties just like Peaje in this case.

The balancing test that opposing Counsel advocates is a test under which relief would never be granted, because in their view really the only thing that matters is to have this quiet period. Well, that would be all right --

THE COURT: This is beginning to become a run-on sentence.

MR. BRUNSTAD: Yes, your Honor. Thank you very much.

MS. SOOKNANAN: Your Honor, I just have three brief points in rebuttal. First with respect to the burdens. Whoever bears the burden it is clear that in this case below we met our burden. We showed cause, we showed that we were secured creditors with a lien on property, that they are diverting our property and that we are not adequately protected.

THE COURT: Where's the evidence that we should have looked at that would cast serious doubt on the $19 million per month income stream that is being paid by the non-stay -- non-Commonwealth?

MS. SOOKNANAN: Your Honor, the evidence is in the stipulated facts itself, it's all the statements by these very entities saying that those contributions are uncertain. They cannot on one hand point to that future revenue stream and point to these hypothetical payments and then say "By the way, those are uncertain, we don't know that they will be paid." And remember, an evidentiary hearing was scheduled in this case.

The Commonwealth suggests, goes as far as to say it was incumbent upon us to notify the Court that we had other evidence to submit. That -- it's somewhat disingenuous to say that.

To understand the timing, a hearing was scheduled for November 3rd. The day before the parties submitted joint stipulations which we had gotten together and agreed to in order to streamline the hearing. Everyone was fully aware that there were other points that parties intended to meet, we notified the Court that morning that there would be expert testimony.

So the suggestion that we should have somehow told the Court that we had other evidence, or that it was clear to the Court that these stipulations were the entire record that the parties

had agreed to is frankly absurd, these were filed on November 2nd and the hearing was cancelled on November 2nd.

THE COURT: But as to the 19 million a month, Mr. Chesley told us that what wasn't uncertain were the non-government contributions.

MS. SOOKNANAN: That is -- that is not what we have a said, your Honor. The Commonwealth in October in its fiscal plan said that those contributions of municipalities themselves was uncertain. That's what they wrote in their fiscal plan and they are saying here today that they are certain. I mean, they are saying essentially that all secured debt of Puerto Rico will be paid in full.

That's what they suggested today and yet they repeatedly say otherwise in pages and pages of their brief talking about how they do not have money to pay their creditors. They do not -- they cannot meet their debts. And neither the Commonwealth nor the ERS addressed today their prior statements that these contributions are uncertain.

And with respect to the monthly contributions, your Honor, it's currently $13.9 million in payments. Those are interest

payments only that go through 2020. In 2020, principal payments kick in and that gets bumped up a significant amount.

I mean, at the end of the day, there was a hearing scheduled that we were entitled to, statutorily entitled to under PROMESA where we would have an expert testify, where the Commonwealth would put forth evidence on the adequate protection question. And at a minimum we are entitled to that hearing and the District Court (indecipherable). We cancelled the night before it was to be held and on the same day that these stipulated facts were submitted.

One more brief point, the Commonwealth -- I apologize if I'm over -- but the Commonwealth has -- you know, in discussing what an extraordinary case would be has said that this Court may not be concerned because what we're dealing with here is money and cash collateral and that can be repaid. And in bankruptcy cash collateral is actually entitled to the most protection because once it's been dissipated and spent there's nothing left. And all that will be left here at the end of it, once they have dissipated and spent her money, as they have admitted, is an unsecured claim. That

is not enough. The Constitution requires more. Thank you.

THE COURT: After the clerk adjourns us I'd like Counsel to remain at the table, one or more of us is going to come to the well to say hello. There's nothing else, I take it? Well argued. Thank you. We'll do the best we can.

(Proceedings concluded.)

STATE OF MICHIGAN)
) SS
COUNTY OF GENESEE)

I, Quentina R. Snowden, do hereby state that the foregoing document was reduced to typewritten form by me from digital media, and that it represents a complete, true and correct rendition, to the best of my abilities, of the proceedings held in this cause.

I assume no responsibility for any inaudible portions, if any, by any speakers that are not discernible during the proceedings.

I further certify that I am not connected by blood, or marriage with any of the parties; their attorneys or agents; and that I am not interested, directly, indirectly, or financially, in the matter of controversy.

Dated: May 27, 2017

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Quentina R. Snowden, CSR-5519
Notary Public, Genesee County, Michigan
My commission expires: 1/4/2018

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